

**CITY OF GLOUCESTER
CONSERVATION COMMISSION MINUTES
WEDNESDAY, November 3, 2010 - 7:00 PM
CITY HALL, KYROUZ AUDITORIUM
ROBERT GULLA, CHAIRMAN**

Members Present:

**Robert Gulla, Chair
John Feener
Steve Phillips
Charles Anderson**

Members Not Present:

**Ann Jo Jackson, Co Chair
Barry Gradwohl
Arthur Socolow**

Staff:

**Lisa Press, Agent
Pauline Doody, Recording Clerk**

Items may be heard 15 minutes before their scheduled time.

I. 1-5 minutes, review of amended, updated or final information, status reviews, modifications, signing decisions etc.

28-2098 8 Drumhack

Commission comments:

Ms. Press stated that 8 Drumhack is before the Commission to tweak the conditions if necessary, regarding the groups of plantings and the varying heights. She also stated her satisfaction with the conditions as presented.

Mr. Gulla asked when the first cuttings would take place.

Mr. Manuell stated the cutting would take place in the spring.

Mr. Feener stated that observation should be taken after 1 full calendar year, which would encompass two growing seasons for shrubs and trees.

Conditions:

- **Observation of plantings for 1 full calendar year after 1st cutting.**

Motion: To approve the project at 8 Drumhack with the submitted conditions.

1st: John Feener

2nd: Steve Phillips

Vote: All approved 4-0

28-1910 149 Atlantic Ave duplicate extension

Ms. Press stated that documentation needs to be signed by the Commission.

28-1865 revised EO 46 Leverett St

Ms. Press stated that documentation needs to be signed by the Commission:

42A Laurel St- Minor modification

Ms. Press stated that the already approved project entails building retaining walls, but the applicant also wants to deal with driveway runoff. She stated she went to the site and the drive needs to be eventually re-graveled; if it is not done the soils will runoff into the wetlands. For the time being to attain run-off, Mr.

Araneo will create a gravel trench to catch the runoff and it would be better to do the work now since the equipment is already on site. Ms. Press displayed pictures for the Commission to review.

Motion: To approve the minor modification at 42A Laurel St.

1st: Steve Phillips

2nd: John Feener

Vote: All approved 4-0

II. PUBLIC COMMENT

Commissioner John Feener stated that a presentation regarding Invasive Control will be at the Ipswich Town Hall next week and all are encouraged to attend.

Michael Nimon

Mr. Nimon stated his concern regarding the different types of piles allowed in sensitive areas. He stated he wanted to weigh in as a builder and his hope is that the Commission will approve concrete piles.

III MINUTES REVIEW

The Commission reviewed the minutes for September 1 & 15 2010.

Motion: To approve the minutes for September 1st & 15th.

1st: John Feener

2nd: Steve Phillips

Vote: All approved 4-0

Chair Robert Gulla discussed with the Commission two issues he was informed of by the DEP. The two issues involved the use of lattice on the underside of a structure and the use of concrete piles. The feedback he received from DEP regarding the lattice is that lattice should not be used. Mr. Gulla stated he would like to wait for a full Commission to review this subject.

DEP stated in an email that the concrete piles are an engineering issue.

Motion: To approve the policy for the use of concrete piles without footings

1st: John Feener

2nd: Charles Anderson

Mr. Feener stated that the Commission has the opportunity to control the use of equipment and protect the soil structure. The Commission should have standard boilerplate methods.

Mr. Gulla The Commission needs to come up with some simple directives for pile driving.

Mr. Feener stated that it would be beneficial to see what methods the contractors use and then look at it environmentally and work together.

Vote: All approved 4-0

IV PUBLIC HEARING approximately 7:15 PM

A. New, 28-2105- 243 East Main Street, Notice of Intent submitted by Andrew Campbell to repair an existing stone seawall in a coastal bank resource area. (Map 79 lot 11).

Presenter: Bill Manuell, Wetlands and Land Management

Mr. Manuell stated that the seawall that fronts the property needs repair. The upper 3-½ feet have been pushed out with frost action. The stone would be excavated by hand and moved to another part of the property. The new materials would be wheel barrowed in. The work will coincide with the low tides, which will be done with in 3-4 days. There is 50 linear feet of wall. There are weeps in the wall.

Commission Comments:

Mr. Gulla stated that a boom would be needed.

Mr. Manuell stated that a boom serves no purpose because nothing will float. All the work will be done at low tide.

Ms. Press asked that a letter stating that a boom is not needed to be sent to the Harbor Master for signoff.

Public comment: None

Conditions:

- Boom required unless the Harbormaster gives sign off

Motion: To approve 243 East Main Street, Notice of Intent submitted by Andrew Campbell to repair an existing stone seawall in a coastal bank resource area. (Map 79 lot 11).

1st: Charles Anderson

2nd: Steve Phillips

Vote: All approved 4-0

B. New- 28-2107- 5 Aileen Terrace, Notice of Intent submitted by John Haley Jr., to renovate an existing studio and to construct an inground pool, spa and patio in the buffer to a coastal bank resource area. (Map 137 lot 3).

Presenter: Ann Martin, LEC Environmental Consultants, Wakefield

Ms. Martin stated that this is an existing studio that they want to renovate. The top of the covered porch will be taken off, the patio to be extended and a pool to be installed. It will be 15x20. The patio will be blue stone set in stone dust. The project is in the buffer zone to the coastal bank. The pool is 52 feet from the top of the coastal bank. The plan shows the erosion controls that are in place which are 36' from the top of the coastal bank. There have been changes made to the landscaping plan. The large trees will remain, however, a small oak of 2" caliper and 20 feet tall, five shrubs, privet and a large hydrangea will be removed along with a small amount of lawn area. The pool will eliminate those plantings and lawn area. We have created 1-1 square footage between the proposed impervious in the buffer zone with native plantings and we have proposed trees and shrubs at a 10-1 ratio as well as a large number of ground cover species. Ms. Martin stated that in the NOI we are proposing for erosion controls straw wattles and orange construction fence.

Commission comments

Mr. Feener asked if the pool area was calculated as pervious or impervious surface.

Ms. Martin stated that it was calculated as impervious and used for the 2-1 ratio for the plantings.

Ms. Press questioned an area on the plan where more plantings were to be planted, but were not reflected on the plan.

Peter White, Zen Associates

Mr. White clarified where the plantings were located and would expand on the plantings in the area that Ms. Press requested.

Mr. White stated that the Privet is to be removed from the back, however they would come back later in the year for that.

Mr. Feener questioned why the pool was located so close to resource.

Mr. White explained where the septic is and their desire to preserve the big trees.

Mr. Feener stated that he didn't understand why trees are being preserved for habitat when it is really just for architecture. His concern is that the applicant is using the preservation of an oak tree, that has no ecological value, as a reason why to put the pool so close to resource.

Mr. White explained where the pool was in relation to the leach field lines for the septic and a major ledge cropping. He explained that is the reason the pool is located. It would mean having to move the septic.

Mr. Feener requested a written narrative describing the constraints of the pool.

Public comment:

Jim Alvarez,

Mr. Alvarez expressed his concern from a privacy point of view, being a close neighbor. He stated he would like to see more plantings to make the area more private. He confirmed that the grade would stay the same.

Mr. Gulla stated that the Commission has to stick with conservation issues only.

Mr. Feener stated that the mitigation proposal includes replanting on the upward side of the pool toward the house. There is plenty of room on the other side for planting where the coastal bank is. I prefer all the mitigation to go on the other side, as it would be beneficial to resource. They should see credit for planting near the coastal bank.

Ms. Martin stated that the square footage of the plantings is 2-1 and the number of plants in ratio to trees lost and replaced and shrubs lost and replaced is 10-1.

Mr. Gulla stated that the planting in our jurisdiction are at or exceed our requirements.

Mr. Feener wants to preserve the coastal bank and would like plantings to be near the coastal bank on the downward slope.

Conditions:

- **Pool water to be trucked off site**
- **Add more plantings toward coastal bank**
- **Revised planting plan**

Motion: To approve 28-2107- 5 Aileen Terrace, Notice of Intent submitted by John Haley Jr., to renovate an existing studio and to construct an inground pool, spa and patio in the buffer to a coastal bank resource area. (Map 137 lot 3).

1st: Charles Anderson
2nd: John Feener
Vote: All approved 4-0

C. New- 11 Lincoln St, Notice of Intent submitted by Howard Williams, to conduct assessment and remediation of fuel oil release from former oil storage tank in riverfront resource area. (Map 236 lot 37).

Presenter: James Deecloulous, Deecloulus Environmental

Mr. Deecloulous stated that on September 9, 2010 a 2000-gallon storage tank was removed and heavy oil contamination of the soil was found. A report has been sent to DEP and we are trying to access the level of contamination. Monitoring wells will be installed for full lateral and vertical assessments. The contaminated dirt will be excavated out, disposed of properly and replaced with clean soil. A previously approved NOI for a septic upgrade will be installed this week. Erosion controls will be in place.

Commission comments:

Ms. Press stated that the work being done is next to marsh and ACEC.

Mr. Feener inquired about the process of installing the Geo probes and asked for documentation to be provided to the Commission.

Mr. Deecloulous explained the procedure to the Commission.

Mr. Gulla asked for a timetable for the project.

Mr. Deecloulous stated that once the extent of the contamination is known work will begin immediately. All the information obtained would be forwarded to the Commission.

Public Comment: None

Motion: To approve 11 Lincoln St, Notice of Intent submitted by Howard Williams, to conduct assessment and remediation of fuel oil release from former oil storage tank in riverfront resource area. (Map 236 lot 37).

1st: John Feener

2nd: Steve Phillips

Vote: All approved 4-0

D. New- 28-2106- 23 Trenel Cove Road, Notice of Intent submitted by Michael O'Laughlin, to remove and re-construct an addition with a frostwall foundation and construct a deck in riverfront resource area. (Map 91 lot 13).

Presenter: Bill Manuell, Wetlands and Land Management, Danvers, MA.

Mr. Manuell stated that the existing porch would be deconstructed and then construct a new addition over the footprint and out. It will be in the buffer to coastal bank and riverfront area. There is an existing tennis court and retaining wall. The excavated work will be for a frost wall. The work will be minimal. The deck will be supported with sona tubes. The owner has dug test holes and found there is sufficient depth for support. The work will be adding 533 square feet of impervious area and a designated area of 1080 square feet along the lower property line will be planted with native low grow shrubs. The location of the dumpster is to be next to the existing home.

Commission comments

Mr. Gulla stated that in relation to the crown; it only works if there is a protection plan in place. Installing a snow fence around the tree will keep heavy equipment away from the root system and the tree itself.

Mr. Feener stated that the weed barrier needs to be removed and no more than 10% of live tissue of each canopy of each tree to be removed

Mr. Manuell stated that the canopy goes to the ground and it would be trimmed to be 8' off the ground.

Mr. Feener stated that the tree is diseased and by removing the bottom branches it will improve the health of the tree. The tree is suffering from Cytospora Canker.

Public comment: None

Conditions:

- **Weed barrier to be removed**
- **Snow fence around base of tree to deter heavy equipment from running over root system**
- **No more than 10% of live tissue of canopy of each tree to be removed**

Ms. Press asked about floats being stored on the marsh and if any belonged to the owner. The owner stated that none of the floats were his.

Motion: To approve 28-2106- 23 Trenel Cove Road, Notice of Intent submitted by Michael O'Laughlin, to remove and re-construct an addition with a frostwall foundation and construct a deck in riverfront resource area. (Map 91 lot 13).

1st: John Feener

2nd: Charles Anderson

Vote: All approved 4-0

V. PUBLIC HEARINGS approximately 8:15 PM

A. Continuation-28-2096- 134 & 136 Hesperus Avenue, Notice of Intent submitted by John Ferraro, to conduct site improvements for a new subdivision including; drainage, utilities, and roadway in buffer to an inland resource area. (Map 190 lots 41 & 61).

Applicant requests continuation to November 17, 2010.

Motion: To continue 28-2096- 134 & 136 Hesperus Avenue, Notice of Intent submitted by John Ferraro, to conduct site improvements for a new subdivision including; drainage, utilities, and roadway in buffer to an inland resource area. (Map 190 lots 41 & 61) to November 17, 2010.

1st: Steve Phillips

2nd: Charles Anderson

Vote: All approved 4-0

B. Continuation- RFD 125 Bray St Request for Determination submitted by Michael Seekamp, to make a determination as to the classification of a stream. (Map 242, Lot 43).

Presenter: Michele Harrison, 63 Middles St, Gloucester

Attorney Harrison stated that she has reviewed the regulations regarding the two issues that were of concern to the Commission.

1. If an RDA is the correct filing
2. If there are competent sources to provide credible evidence for the Commission to make the requested determination.

Attorney Harrison stated that filing an RDA is an appropriate filing.

The applicant can request a determination as to whether a site is subject to Mass General Law and the RDA is used to determine how that portion of the property fits in with the statute. It was found that the applicant could file an ANRAD to determine the boundaries of the buffer zone until it is determined whether it is a perennial or intermittent stream.

Mike Seekamp and the Agent did call DEP and spoke with Heidi Davis and she did confirm that both an RDA & ANRAD are acceptable filings.

The determination we are looking for is that the subject stream when it enters the pond on the site is determined to be an intermittent stream and therefore not subject to the rivers act.

The second issue is for the Commission to determine whether the stream is intermittent or perennial. Attorney Harrison read from the State regulations regarding streams. She stated that the Commission has been presented with evidence that the stream has been observed 1 time by Mr. Seekamp and 3 times by Mr. Carrigan within a 12-month period, during a non-drought period as stated in the regulations. The regulations state that it must be from a competent source. The Commission may consider evidence from other sources that they determine to be competent. This was discussed with the Agent and as experienced as the developer may be, there is always potential for some self-interest, but notwithstanding that self-interest, there is enough credible evidence that has been presented to the Commission.

The minimum watershed threshold for a perennial stream is one half of a square mile. The watershed in this instance is only .0795 less than one tenth of a square mile.

In addition to what we have is evidence by Mr. Seekamp from the Massachusetts Stream Stats and the correspondence given by Dave Sargent saying from his experience he has seen this stream when it has not been flowing.

Commission comments

Mr. Phillips stated that assuming we are persuaded that we can do this on an RDA what would our answer actually be, since normally the Commission responds either yes it is applicable or no. Here we are asked to make a specific binding. What do you propose and who has the authority that supports your position.

Attorney Harrison stated that her suggestion is to make a determination that it is negative, but with a determination that it is an intermittent stream and also add language that the finding is specific only to this intermittent stream and not to any other potential resource area. We are asking for a negative determination

Mr. Feener stated that it is listed in the FEMA as a perennial stream. The evidence that has been given to the Commission and you are saying we have the right to tell the USGS they are wrong. Do we approach them first?

Mike Seekamp, 129 RT 125, Kingston NH

Mr. Seekamp stated that when these maps were made they did not have stream stats and comprehensive watershed studies were not done. Most are accurate, but it was very uncommon to find a perennial stream with no intermittent streams associated with it as in this case. Mr. Seekamp showed the watershed area to the Commission and explained the site. He read from regulations to the Commission.

Mr. Feener stated that evidence is being submitted against a higher authority and is it alright for this Commission to say the USGS information is wrong.

Mr. Carrigan stated that we have submitted documentation to prove that it is an intermittent stream.

Mr. Feener stated that the Commission has found a flaw in the method of the documentation. We are not questioning anyone's character. We want to make sure it was done properly with witnesses there.

Ms. Press stated that she wrote to Dave Sargent and explained the status of this hearing and asked him how confident he was that this stream was dry in a non-drought year and he stated he was very confident.

Mr. Gulla read from the handbook and from the act. It is important because we are deciding on a very large piece of land. The concern is the lack of knowledge and the conflict of interest of the applicant, may cause a mistake. I believe it may in the best interest is to have a third party review. An independent should be involved in the documentation process. Mr. Gulla read from the handbook to the public. None of the regulations suggest that the applicant should be the ruling body to determine if it is intermittent or perennial.

Attorney Harrison stated that it does allow for competent sources. It allows the Commission to look at that. We do have the one-day that Mr. Seekamp was there. There is also have the comment from Dave Sargent saying that he is very confident that this is an intermittent stream. Please look at the evidence that Mr. Seekamp, Mr. Sargent and the field observations that have been presented to satisfy your concerns.

Mr. Phillips went over regulations again and stated that the field documentation must be made by a competent source.

Mr. Feener asked if DEP was asked about the damming of the stream by beavers.

Ms. Press stated that DEP stated that the dam could impact it either way.

Mr. Feener agreed with Mr. Gulla regarding a 3rd party review.

Attorney Harrison stated that the applicant is comfortable with a third party review.

Mr. Phillips stated that he does not see what a 3rd party review would provide to the Commission. He does not believe that this applicant is a competent source. We have 1 measurement by Mr. Seekamp, which is competent. Mr. Sargent is a competent source but has not made the other 3 reviews of the site in the specified time period.

Mr. Gulla stated that his issue is that one spot in one stream does not necessarily mean it is intermittent.

Mr. Phillips stated that the Commission doesn't have sufficient information to make a determination.

Public comment:

Helen Farr, 6 Pirates Lane, Gloucester

Ms. Farr stated she looked into what would be necessary to determine an intermittent and perennial streams and there is a standard guidance for this and it has to do with looking at the soil and hydrology, plant life etc. In terms of looking for a 3rd party documentation of whether or not this is intermittent or perennial stream those are the tests that should be run to override the USGS determination..

Ms. Press read from a Determination of Applicability form the choices the Commission was limited to.

Mr. Gulla also read from the requirements regarding positive determinations. He stated that if we are going to rule either way, we might not want to rule on this at all.

Ms. Press stated that not confirming is a choice

Mr. Feener stated that the evidence provided has not been sufficient and not moving on it is the best approach.

Ms. Press stated not sure if we cannot rule

Mr. Phillips stated that he was inclined to find a positive determination. We have not been provided with sufficient evidence to rule other wise.

Motion: For a positive determination for RFD 125 Bray St Request for Determination submitted by Michael Seekamp, to make a determination as to the classification of a stream. (Map 242, Lot 43).

1st: Steve Phillips

2nd: John Feener

Vote: All approved 4-0

C. Continuation- RFD 152 Concord St- Request for Determination submitted by Michael Seekamp, to make a determination as to the classification of a stream. (Map 242, Lots 41 & 44).

Attorney Michele Harrison withdrew the RFD application for 152 Concord Street on behalf of her client.

D. Continuation- 6 Fortune Lane, Notice of Intent submitted by Stefan Abramo to construct a new dwelling on a foundation and a garage in buffer to coastal bank resource area. (Map 141 lot 21)

John Feener recused himself.

Presenter: Bill Manuell, Wetlands and Land Management, Danvers MA

Mr. Manuell stated that a revised plan has been submitted to quantify the impervious and number of trees. There are 12 trees removed and 24 to be

planted. There is 1500 square feet of impervious and we are giving back two times that amount in mitigation. We are converting open lawn to native plantings. 2400 square feet will be designated for native planting and invasives to be removed. We have provided a 2-1 ratio of environmental benefits
The driveway area is pervious except for the sloped area.

Pubic Comment: None

Commission comments:

Ms. Press stated on sites where there is temporary disturbance a straw waddle is acceptable. However, they do not last long and in this case a mulch sock would be better.

Mr. Manuell asked if straw bales and silt fence instead of mulch sock.

Ms. Press stated that Gloucester does not allow straw bales.

Mr. Manuell stated that it would straw bales and not hay.

Mr. Gulla stated that we are in agreement but there are people out there that are selling products that aren't what they are supposed to be.

Mr. Manuell stated that there is one company that provides this and the price for a small project like this is very high.

Ms. Press stated to please have extra straw waddles on hand and in the future please do not put on the plan one form of erosion control if that is not what you intend to use.

Ms. Press stated that she would like a formalized document showing where the trees are going to be and where the trees are coming down.

Mr. Manuell stated that within a 6 month of occupancy to submit a landscape plan. It would be a condition and would need a COC.

Conditions:

- **Formalized document showing what the trees are going to be and where the trees are coming down**
- **Within a 6-month of occupancy to submit a landscape plan. A COC needed thereafter.**

E. Motion: To approve 6 Fortune Lane, Notice of Intent submitted by Stefan Abramo to construct a new dwelling on a foundation and a garage in buffer to coastal bank resource area. (Map 141 lot 21)

1st: Steve Phillips

2nd: Charles Anderson

Vote: All approved 3-0

VI. PUBLIC HEARINGS approximately 9:15 PM

A. Continuation- 28-2101-31 Stanwood Ave 28-2100 33 Stanwood Ave, 28-2099 35 Stanwood Ave. Notices of Intent submitted by Gary Litchfield, Litchfield Company, to construct a duplex dwelling, driveway, utilities, grading and landscaping in buffer to riverfront resource area. (Map 230 lot 51).

John Feener rejoined the Commission.

Motion: To continue 28-2101-31 Stanwood Ave 28-2100 33 Stanwood Ave, 28-2099 35 Stanwood Ave. Notices of Intent submitted by Gary Litchfield, Litchfield Company, to construct a duplex dwelling, driveway, utilities, grading and landscaping in buffer to riverfront resource area. (Map 230 lot 51).

1st: Steve Phillips

2nd: Charles Anderson

Vote: All approved 4-0

B. Continuation- 28-2034- 99A Essex Ave- Notice of Intent submitted by David Hill, Gloucester Hotel LLC, to construct a 15, 940, 00 sq. ft. commercial building, a 1,710 sq. ft canopy with associated excavation, foundation and utilities and parking area in riverfront and coastal bank resource area. (Map 216 lots 1, 17 &126)

John Feener recused himself

The applicant requested to continue to November 17 because of a lack of quorum of the Commission. The Commission agreed citing the Mullin Act. Mr. Gulla explained the Mullin Act to the public to inform them of why it was being continued. Mr. Gulla stated that the Commission has to go through the Commission history with this project and the consistency of the Commissioners involved. Ms. Press stated that the Commission should also check with City Counsel regarding this.

Motion: To continue 28-2034- 99A Essex Ave- Notice of Intent submitted by David Hill, Gloucester Hotel LLC, to construct a 15, 940, 00 sq. ft. commercial building, a 1,710 sq. ft canopy with associated excavation, foundation and utilities and parking area in riverfront and coastal bank resource area. (Map 216 lots 1, 17 &126) to November 17, 2010.

1st: Steve Phillips

2nd: Charles Anderson

Vote: All approved 3-0

VII. AS TIME PERMITS: COMMISSION BUSINESS

- A. Requests for Letter Permits/Modifications
None

John Feener rejoined the Commission

VII. AGENT'S REPORT ON VIOLATIONS

EO Atlantic Street (WIA, Sleepy Hollow Pond)

Ms. Press stated that the Wingaersheek Improvement Association is having silt and drainage issues with a stream that leads into Sleepy Hollow Pond and they began excavating and trying to solve these issues without filing. We have trying to stabilize the area and to come up with a temporary solution for it to remain stable while they come back with a filing.

Mr. Gulla asked whom Ms. Press had been in contact with.

Ms. Press stated Bill Cook & Jay Saunders. Neighbors informed DEP. The Wingaersheek Improvement Association hired a contractor to do the work. The next step would include a fee with the enforcement order and an after the fact filing fee. It is a short stabilization for now. A better solution is needed for the winter.

Motion: Approval of the Enforcement Order for Atlantic Street

1st: John Feener

2nd: Steve Phillips

Vote: All approved 4-0

- B.** Requests for Certificates of Compliance
28-1704 101 Wingaersheek Rd
28-1845 Niles Pond Rd
28-1702 25 R Riverview Rd
28-112 8 Drumhack Rd

Motion: To approve the following Certificates of Compliance;

28-1704 101 Wingaersheek Rd

28-1845 Niles Pond Rd

28-1702 25 R Riverview Rd

28-112 8 Drumhack Rd

1st: Steve Phillips

2nd: Charles Anderson

Vote: All approved 4-0

- C.** Requests for Extension Permits
None

The conservation Commission adjourned the meeting adjourned at 9:30 pm.

Motion: To Adjourn

1st: John Feener

2nd: Steve Phillips

Vote: All approved 4-0

If you would like additional information regarding the review status of a particular item, please contact the Community Development Conservation Department via e-mail at mdemick@gloucester-ma.gov or via phone at 978-281-9781.

Additional information can also be obtained on the Conservation Web Page at www.gloucester-ma.gov Click Community Development for a link to Conservation.

Commission Members: If you are unable to attend the meeting, please contact the Community Development office at 978-281-9781 or send Lisa or Marie an e-mail